



K&L GATES

K&L GATES LLP
ONE NEWARK CENTER
TENTH FLOOR
NEWARK, NJ 07102
T 973.848.4000 F 973.848.4001

January 26, 2015

Via Electronic and Overnight Mail

William H. Hyatt, Jr.
D 973.848.4045
F 973.848.4001
william.hyatt@klgates.com

Stephanie Vaughn
Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

Re: Lower Passaic River Study Area
Proposal for Revised Performance Guarantee
Administrative Settlement Agreement and Order on Consent for
Remedial Investigation/Feasibility Study, CERCLA Docket No. 02-2007-2009
Effective May 8, 2007 (RI/FS AOC)

Dear Stephanie:

Pursuant to Paragraphs 100 and 102(b)(ii) of the RI/FS AOC, the Lower Passaic River Study Area Cooperating Parties Group ("CPG") hereby submits this written proposal for a revised Performance Guarantee.

As indicated in my June 16, 2014 and August 29, 2014 letters to Jennifer LaPoma, the CPG has been in the process of determining the projected estimated cost to complete the RI/FS. Based upon the CPG's current projections, the estimated cost of the Work to be performed is at least \$89.8 million, which is \$3.6 million greater than the \$86.2 million established under Paragraph 97 of the RI/FS AOC, excluding the \$450,000.00 provided under Amendment No. 1 to the RI/FS AOC. This figure reflects costs associated with project management, modeling, and completion of RI/FS deliverables. In addition, pursuant to my prior letters, Tierra Solutions, Inc., Maxus Energy Corporation, and Occidental Chemical Corporation ("Occidental") (collectively, "T/M/O") have continued to fail to process AECOM's invoices for Chemical Water Column Monitoring work in Newark Bay, notwithstanding the fact that Occidental alone is the respondent to the Newark Bay Administrative Order on Consent. As EPA is aware, while reserving all rights against T/M/O, AECOM's invoices have been sent to EPA for processing through the RI/FS Trust.

As such, the CPG proposes revising Section 3(b) of the Trust Agreement, as amended, to provide for a \$3.6 million payment into the Trust by no later than April 1, 2015. A proposed Ninth Amendment to the Trust Agreement reflecting this proposed payment modification is enclosed for your review.

Anthony P. La Rocco, Administrative Partner, New Jersey

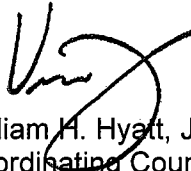
klgates.com

FOIA_08606_0002621

Stephanie Vaughn
January 26, 2014
Page 2

If you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Hyatt, Jr.", with a large, stylized flourish extending from the end of the signature.

William H. Hyatt, Jr.
Coordinating Counsel,
Lower Passaic River Study Area
Cooperating Parties Group

Enclosure

cc: Sarah P. Flanagan, Esq.

NINTH AMENDMENT TO TRUST AGREEMENT FOR THE LOWER PASSAIC RIVER
STUDY AREA PORTION OF THE DIAMOND ALKALI SUPERFUND SITE
DATED MAY 10, 2007

This Ninth Amendment to the Trust Agreement dated May 10, 2007 (this "Ninth Amendment") is entered into as of this ____ day of _____, 2015, by and between the Settling Parties whose names and states of incorporation are set forth in Appendix A to the Second Amendment to the Trust Agreement dated July 27, 2010 ("Second Amendment to Trust Agreement") (the "Grantors"), and U.S. Bank National Association, a National Banking Association (the "Trustee").

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States government, and the Grantors entered into an RI/FS Administrative Settlement Agreement and Order on Consent, effective May 8, 2007 (the "Settlement Agreement") with respect to the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site (the "Site") to which the Trust Agreement dated May 10, 2007 (the "Trust Agreement") was appended as an Exhibit;

Whereas, EPA and the Grantors entered into Amendment No. 1 to the Settlement Agreement, effective on May 21, 2009 ("Settlement Agreement Amendment No. 1"), which provides that the Grantors will make an additional payment to EPA of Future Response Costs, in the amount of \$450,000;

Whereas, pursuant to Settlement Agreement Amendment No. 1, the Grantors and the Trustee entered into an Amendment to the Trust Agreement ("First Amendment to Trust Agreement"), effective June 19, 2009;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Second Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$16,200,000;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Third Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$11,000,000 and revising the meaning of the term "Work" in the Trust Agreement;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Fourth Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$7,600,000;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Fifth Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$4,000,000;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Sixth Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$6,200,000;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Seventh Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$1,700,000;

Whereas, pursuant to Paragraph 102(b)(ii) of the Settlement Agreement, the Grantors and the Trustee entered into the Eighth Amendment to Trust Agreement, increasing the total funds to be deposited in the Fund by the Grantors by \$2,500,000;

Whereas, pursuant to Paragraphs 100 and 102(b)(ii) of the Settlement Agreement, the Grantors submitted a written proposal dated January 26, 2015 ("Proposal") for a revised Performance Guarantee to EPA to increase the total funds to be deposited in the Fund by the Grantors by \$3,600,000, which was accepted in writing by EPA on _____;

Now, therefore, the other terms and conditions of the Trust Agreement, as amended, remaining fully in effect and not being altered in any way, the Grantors and the Trustee hereby agree to amend the Trust Agreement as follows:

"Section 3. Establishment of Trust Fund" shall be amended so that Section 3(b) shall read:

"(b) The Trust is established initially as consisting of funds in the amount of eight million U.S. Dollars (\$8,000,000). This initial payment shall be deposited into the Trust within 90 days from the Effective Date of the Settlement Agreement. Within one year and 90 days from the Effective Date, a second payment of ten million U.S. Dollars (\$10,000,000) shall be deposited into the Trust. Within two years and 90 days from the Effective Date, a third payment of ten million U.S. Dollars (\$10,000,000) shall be deposited into the Trust. Within three years and 90 days from the Effective Date, a fourth payment of nine million, four hundred and fifty thousand U.S. Dollars (\$9,450,000) shall be deposited into the Trust. Within four years from the Effective Date, a fifth payment of five million U.S. Dollars (\$5,000,000) shall be deposited into the Trust. Within four years and 90 days from the Effective Date, a sixth payment of five million U.S. Dollars (\$5,000,000) shall be deposited into the Trust. Within five years from the Effective Date, a seventh payment of nine million U.S. Dollars (\$9,000,000) shall be deposited into the Trust. Within five years and ninety days from the Effective Date, an eighth payment of three million U.S. Dollars (\$3,000,000) shall be deposited into the Trust. Within six years from the Effective Date, a ninth payment of ten million, two hundred thousand U.S. Dollars (\$10,200,000) shall be deposited into the Trust. By not later than December 13, 2013, a tenth payment of four million U.S. Dollars (\$4,000,000) shall be deposited into the Trust. By not later than February 28, 2014, an eleventh payment of six million, eight hundred thousand U.S. Dollars (\$6,800,000) shall be deposited into the Trust. By not later than July 1, 2014, a twelfth payment of two million, seven hundred thousand U.S. Dollars (\$2,700,000) shall be deposited into the Trust. By not later than November 7, 2014, a thirteenth payment of two million, five hundred thousand U.S. Dollars (\$2,500,000) shall be deposited into the Trust. By not later than February 27, 2015, a fourteenth payment of one million U.S. Dollars (\$1,000,000) shall be deposited into the Trust. By not later than April 1, 2015, a fifteenth payment of three million, six hundred thousand U.S. Dollars (\$3,600,000) shall be deposited into the Trust. The timing or the amount of the fourteenth and fifteenth payment amounts may be amended pursuant to Paragraph

100 and/or Paragraph 102 of the Settlement Agreement. The Trustee shall be notified in writing by Grantors' Representative of any such amendment of timing of payment amounts. Such funds, along with any other monies and/or other property hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the "Fund.""

SIGNATURE PAGE
IN THE MATTER OF: LOWER PASSAIC RIVER STUDY AREA PORTION OF THE
DIAMOND ALKALI SUPERFUND SITE
NINTH AMENDMENT TO TRUST AGREEMENT DATED MAY 10, 2007

In Witness Whereof, the parties hereto have caused this Ninth Amendment to the Trust Agreement Dated May 10, 2007 to be executed by their respective officers duly authorized and attested as of the date first above written:

TRUSTEE

[Signature]

[Printed Name]

[Title]

State of _____

County of _____

On this ____ day of _____, 2015, before me personally came _____

[Name of Trustee Official]

to me known, who, being by me duly sworn, did depose and say that she/he is _____

[Title]

of _____, the National Banking Association described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

SIGNATURE PAGE

**IN THE MATTER OF: LOWER PASSAIC RIVER STUDY AREA PORTION OF THE
DIAMOND ALKALI SUPERFUND SITE**

NINTH AMENDMENT TO TRUST AGREEMENT DATED MAY 10, 2007

In Witness Whereof, the parties hereto have caused this Ninth Amendment to the Trust Agreement Dated May 10, 2007 to be executed by their respective officers duly authorized and attested as of the date first above written:

GRANTOR'S REPRESENTATIVE

William H. Hyatt, Jr., Esq.

As Grantor Representative under Trust Agreement dated May 19, 2007
between Grantors and U.S. Bank National Association regarding the
LPRSA portion of the Diamond Alkali Superfund Site

[Signature]

State of New Jersey

County of Essex

On this __ day of _____, 2015, before me personally came William H. Hyatt, Jr.
[Name]

to me known, who, being by me duly sworn, did depose and say that he is the authorized
Representative of the Grantors who executed the Trust Agreement dated May 19, 2007 and is
duly authorized to execute the above instrument on behalf of the Grantors listed on Appendix A
to the Second Amendment to Trust Agreement dated July 27, 2010; and that he signed his name
hereto.

[Signature of Notary Public]